

Department of the Treasury  
Office of Thrift Supervision

# ***Transmittal***

October 24, 1997

Number: 181



The Office of Thrift Supervision (OTS) has issued the attached final regulation covering deposits at savings associations. The new streamlined regulation eliminates duplicative provisions and rules that previously acted to micromanage thrifts' deposit operations.

For example, a general provision that gives overall guidance necessary to ensure safety and soundness replaces several specific record-keeping requirements. The rule also codifies OTS' position that OTS rules preempt state laws affecting deposit-taking activities.

In addition, the agency removed several long-standing deposit provisions that duplicated laws, such as the Truth in Savings Act, and Federal Reserve Board Regulations D (Reserve Requirements) and DD (Truth in Savings), which apply to thrifts as well as banks. The new OTS rule includes cross references to Regulations D and DD.

All remaining deposit rules, except definitions, have been consolidated in a new Part 557 in the Code of Federal Regulations to make deposit-related rules easier to locate.

The final regulation contains only minor changes from the version proposed April 2, 1997. For example, OTS has added state licensing and registration laws to the rule's list of state laws that are preempted by OTS regulations. The final rule also clarifies that savings associations may keep deposit records electronically, and the rule has been rewritten in a plain English format to be more readily understandable.

The final rule was published in the October 22, 1997, edition of the *Federal Register*, Vol. 62, No. 204, pp. 54759-54765, and is effective January 1, 1998.

For further information, contact:

Edward J. O'Connell III  
Project Manager 202/906-5694

Christine Harrington  
Counsel,  
Banking & Finance 202/906-7957

Nicolas P. Retsinas  
Director  
Office of Thrift Supervision

Attachment

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

12 CFR Parts 506, 545, 556, 557, 561, 563, 563g

[No. 97-108]

RIN 1550-AB00

### Deposits

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

**SUMMARY:** The Office of Thrift Supervision (OTS) is issuing a final rule streamlining its deposit-related regulations. The final rule will eliminate duplicative, overlapping, and outdated regulations, and those that micromanage savings associations. The final rule also codifies the OTS position on federal preemption of state laws affecting deposit-related activities.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Edward J. O'Connell, III, Project Manager, (202) 906-5694, Supervision Policy; Robyn H. Dennis, Manager, Thrift Policy, (202) 906-5751; Christine Harrington, Counsel (Banking and Finance), (202) 906-7957; or Karen Osterloh, Assistant Chief Counsel, (202) 906-6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

### SUPPLEMENTARY INFORMATION:

#### I. Background of the Proposal

OTS published a notice of proposed rulemaking (NPR) on April 2, 1997

proposing to amend its deposit-related regulations.<sup>1</sup> The NPR proposed to streamline the regulations by eliminating duplicative, overlapping, and outdated regulations, and those that micromanage savings associations. Additionally, OTS sought to codify its long-standing position on federal preemption of state laws affecting deposit-related activities. Finally, OTS proposed to remove regulations that merely restate existing statutory authority or universally recognized incidental deposit-related powers.

With these goals in mind, OTS proposed to consolidate all remaining deposit-related regulations in a new part 557. OTS predicted that this change would make deposit-related regulations easier to locate and follow. OTS issued the NPR pursuant to the Regulatory Reinvention Initiative of the Vice President's National Performance Review and section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.

#### II. General Discussion of the Comments

Eight commenters responded to the NPR including five federal thrift institutions and three trade associations. The commenters generally supported the proposal to remove unnecessary, duplicative, or outdated regulations. They specifically endorsed the removal of OTS regulations duplicating areas covered by the Federal Reserve Board's (FRB) Regulation D and Regulation DD.<sup>2</sup> Commenters also generally endorsed the proposed consolidation of the remaining deposit-related regulations at new part 557. Comments addressing specific regulations are discussed in the section-by-section analysis below.

#### III. Section-by-Section Analysis

##### A. Disposition of Existing Deposit-Related Regulations

The OTS proposed to delete certain existing regulations, and consolidate the remaining relevant provisions in a new part. Sections proposed for deletion included: § 545.10 (Savings Deposits or Shares); § 545.11 (Issuance of Accounts); § 545.12 (Demand Deposit Accounts); § 545.13 (Account Records); § 545.14 (Determination and Distribution of Earnings); § 556.12 (Deposit Assurance of Direct Deposit of Social Security

Payments); § 563.2 (Simple Form of Certificate; Passbooks); § 563.3 (Long Form of Membership Certificate); § 563.6 (Payment of Accounts on Demand); § 563.7 (Fixed-Term Accounts); § 563.9 (Eurodollar Deposits); and § 563.10 (Earnings-Based Accounts).

OTS received comments supporting the deletion of most of the cited sections. These sections are deleted as proposed. Comments opposing the deletion of specific sections, however, are discussed below. Comments received on existing provisions that were retained and incorporated into the new part 557 are discussed in connection with the relevant section under that part. A derivation chart has been provided at the end of this preamble.

OTS emphasizes that the changes made in this final rule are not intended to reduce, in any way, the scope of federal thrifts' authority to conduct deposit activities.

**Section 545.12 Demand Deposit Accounts.** Existing § 545.12(b) prohibits a federal association from paying interest on demand deposits and specifically states that finders' fees, as defined in § 561.16(b), are not interest. OTS proposed to delete this paragraph and to include the finders' fees exception in the Thrift Activities Handbook ("Handbook"). One commenter supported retaining the finders' fee provisions in OTS regulations. This commenter argued that the Handbook would not override the statutory prohibition on interest on demand deposits at 12 U.S.C. 1464(b)(1)(B)(i), and feared that the Handbook may not be issued until after the effective date of the new deposit regulation. Another commenter supported deleting the finders' fee provision.

OTS regulations at § 561.16 define "demand accounts" for the purposes of 12 U.S.C. 1464(b) and the implementing regulations. This definition specifically states that fees paid by a savings association to a person who introduces a depositor to the savings association shall not be deemed an interest payment, if the fee meets certain criteria. OTS believes this definition is sufficient to qualify for the statutory prohibition. Accordingly, the final rule deletes § 545.12(b) as proposed.

Like section 5 of the HOLA, section 11 of the Banking Act of 1933 (12 U.S.C. 371a) and section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) prohibit the payment of interest on demand deposits. The Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC)

<sup>1</sup> 62 FR 15626 (April 2, 1997). (Notice of Proposed Rulemaking on Deposits and Advance Notice of Proposed Rulemaking on Electronic Banking). OTS has separately published a proposed rule on Electronic Banking. 62 FR 51817 (October 3, 1997).

<sup>2</sup> Regulation D addresses the Reserve Requirements of Depository Institutions. 12 CFR part 204 (1997). Regulation DD implements the Truth in Savings Act (TISA). 12 CFR part 230 (1997).

have issued regulations implementing this prohibition at 12 CFR part 217 (1997) and 12 CFR part 329 (1997), and have issued interpretive rules describing when premiums will not be considered to be interest within the scope of this prohibition. See 12 CFR 217.101 (1997) and 12 CFR 329.103 (1997). These interpretations permit premiums to be paid, *inter alia*, if the premium is given only when the depositor opens a new account, or adds to, or renews an existing account. As a result of this guidance, FRB- and FDIC-regulated institutions were constrained from offering incentives to use their products, including the use of new services such as automated teller machines (ATM) or debit cards.<sup>3</sup>

To address this issue, FRB and the FDIC recently revised their interpretive guidance to permit regulated institutions to pay any premium that is not, directly or indirectly, related to or dependent on the balance in a demand deposit account and the duration of the account balance.<sup>4</sup> While OTS has no interpretive rule specifically addressing premiums, OTS agrees that premiums under such circumstances are not interest and will generally follow the FRB and FDIC interpretations on this point.

**Section 556.12 Deposit Assurance of Direct Deposit of Social Security Payments.** The OTS policy statement at § 556.12 states that a federal association has implied powers to provide deposit assurance in connection with the Social Security Administration's direct deposit program. This policy statement also includes advice on safeguards and controls required to address the risks of the direct deposit program. OTS proposed to delete the policy statement.

Two commenters supported this deletion, but noted that additional regulatory guidance would be helpful to address such issues as safeguards and controls, and compliance with the FRB's Regulation E (Electronic Funds Transfers).<sup>5</sup> The OTS Compliance Handbook addresses Regulation E matters in section 330, *Electronic Funds Transfer*. OTS is reviewing whether the

issuance of additional guidance is necessary.

**Section 563.7 Fixed-Term Accounts (Term Accounts).** Existing § 563.7(d) states that a certificate account may prohibit withdrawal prior to maturity, except under circumstances set forth in the certificate. This paragraph further provides that, in case of the accountholder's death or incompetence, a savings association may not prohibit early withdrawal and may not impose an early withdrawal penalty. OTS proposed to delete this paragraph because it duplicates Regulation D.<sup>6</sup>

Two commenters specifically addressed this paragraph. One supported deletion. The other argued that the section is not duplicative. This commenter argued that Regulation D neither authorizes an institution to prohibit early withdrawal nor forbids an institution from prohibiting early withdrawal. The commenter noted that § 563.7(d) correctly allows the matter to be addressed by the contract between the savings association and its depositors.

Unless restricted by statute or regulation, a federal savings association needs no specific authorization to enter into agreements establishing maturity dates for accounts and prohibiting early withdrawal under circumstances specified in those agreements. Regulation D does, however, limit this broad authority. For example, to meet the definition of time deposit under Regulation D, an institution must limit the depositor's right to withdraw his account unless the deposit is subject to a specified penalty for early withdrawal.<sup>7</sup>

The commenter correctly noted that, unlike existing § 563.7, Regulation D does not require a savings association to permit early withdrawal, subject to penalties, upon the death or incompetency of the accountholder. Rather, Regulation D merely permits the savings association to take such action under these and other circumstances.<sup>8</sup> However, in the interest of uniformity with other insured institutions, the OTS had determined that it is not necessary to impose this additional requirement on federal savings associations. Therefore, OTS concludes that existing § 563.7 may be deleted in this final rule.

**Section 563.9 Eurodollar Deposits.** Existing § 563.9 addresses the issuance of Eurodollar deposits. OTS proposed to delete this provision as unnecessary.

Three commenters supported deleting this provision. One of these

commenters, however, suggested that OTS reiterate, either in a regulation or the preamble, that savings associations have authority to accept Eurodollar deposits under their general authority to accept deposits. OTS has deleted this regulation as proposed, but notes that federal savings associations continue to be permitted to issue Eurodollar certificates as part of their deposit activities authorized by the HOLA.<sup>9</sup>

#### B. Proposed Part 557

OTS proposed to adopt a new part 557, which would include all of the agency's deposit-related regulations. Although OTS proposed part 557 in a traditional format, this final rule uses the plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register *Document Drafting Handbook* (January 1997 edition). The primary goal of plain language drafting is to make regulations more readily understandable. Plain language drafting emphasizes informative headings (often written as a question), non-technical language (including the use of "you"), and sentences in the active voice.

Although commenters did not have an opportunity to comment on the plain language format prior to its use in this final rule, OTS believes that the benefits of the plain language format justify its use. The substance of the proposed regulation did not change as a result of the plain language drafting. OTS welcomes comments on the format and suggestions on how to improve this format.

#### Subpart A—General

**Section 557.1 What does this part do?** New § 557.1 states that part 557 applies to savings associations' deposit activities. Specifically, subpart B applies to federal savings associations, while subpart C applies to both federal and state chartered savings associations.

#### Subpart B—Deposit Activities of Federal Savings Associations

**Section 557.10 What authorities govern the issuance of deposit accounts by a federal savings association?** Proposed § 557.1 stated that a federal savings association may raise funds through accounts and may issue evidence of accounts under section 5(b)(1) of the HOLA, by the terms of its charter, and by part 557.

OTS received two comments on the proposed section. One commenter feared that savings association personnel may not realize that

<sup>3</sup> For example, one bank was prevented from offering incentives to existing demand customers who signed up for an ATM card because the incentives did not coincide with opening, adding to, or renewing an account. Similarly, another bank was prevented from offering incentives to encourage deposit customers to use an ATM card more than three times per month because premiums from the use of a debit card, which reduce the amount on deposit, would have been interest on the deposit under the FRB and FDIC interpretive guidance.

<sup>4</sup> 62 FR 26736 (May 15, 1997); 62 FR 40731 (July 30, 1997).

<sup>5</sup> 12 CFR part 204 (1997).

<sup>6</sup> 12 CFR 204.2(c)(1) n.1 (1997).

<sup>7</sup> See 12 CFR 204.2(c)(1) (1997).

<sup>8</sup> 12 CFR 204.2(c)(1)(i), n.1 (1997).

<sup>9</sup> 12 U.S.C. 1464(b)(1)(A).

Regulation D is applicable. This commenter suggested that the final rule specifically cite Regulation D. OTS believes this suggestion is helpful and has added a reference to Regulation D and Regulation DD in the new § 557.10.

Another commenter suggested deleting the reference to authority granted under the association's charter. The reference to the charter was included to maintain consistency with section 5(b) of the HOLA which authorizes a federal savings association to accept deposits "[s]ubject to the terms of its charter and regulations of the [OTS]." <sup>10</sup> To the extent that the commenter feared that retention of this reference would require charter amendments whenever a new deposit product is offered, the OTS notes that charters are broad authorizing documents that typically do not specifically address unique deposit products. The model federal stock and mutual charters, for example, contain no restrictions on permissible deposit products. <sup>11</sup>

**Section 557.11** *To what extent does federal law preempt state deposit-related law?* Section 557.11 sets forth OTS's long-standing position on federal preemption of state laws purporting to affect deposit-related activities of federal savings associations. It explicitly states our intent to occupy the entire field of deposit-related regulations for federal savings associations, and sets forth the statutory and regulatory bases for preemption. See proposed § 557.2(a).

One commenter opposed the preemption provision as an infringement on the dual banking system. OTS disagrees. Deposit-taking is one of the most important functions of a savings association, and preemption is essential to OTS regulation of these activities. Section 557.11 merely restates long-standing preemption principles applicable to federal savings associations' operations, as developed in a long line of court cases and legal opinions issued by OTS and the FHLBB. <sup>12</sup>

This final rule should not be construed as evidencing, in any way, an intent by OTS to change its long-standing position on preemption. Moreover, whether OTS continues to have a specific regulation addressing a particular deposit activity or chooses to remove a federal regulation to streamline its regulations and reduce regulatory burden, OTS still intends to

occupy the entire field of regulation of the deposit activities of federal savings associations.

One commenter argued that all preemption questions should be decided on a case-by-case basis, rather than by regulation. Sections 557.11 through 557.13 of the final rule set forth only well-settled principles of preemption and examples of preempted and non-preempted state laws. These are derived from statutory and regulatory authority, as interpreted in case law and prior FHLBB and OTS case-by-case determinations. While OTS will continue to address new questions by issuing interpretive guidance on a case-by-case basis, OTS is hopeful that the increased clarity and specificity of the final rule will reduce confusion and the need for frequent preemption inquiries to OTS.

**Section 557.12** *What are some examples of preempted state laws affecting deposits?* Section 557.12 (proposed § 557.2(b)) contains an illustrative list of preempted state laws. Various commenters suggested additions to the list of preempted state laws. Some would expand the list to reference new types of preempted state laws (e.g., state laws addressing abandoned property, safe deposit boxes, licensing of deposit operations, and reporting requirements). <sup>13</sup>

Except as discussed below, OTS has not revised § 557.12 to add new items to the list of preempted state laws. As the section heading to this final rule emphasizes, the list of preempted state laws is not intended to be exhaustive. Failure to mention a particular state law that affects deposit-taking should not be deemed to constitute evidence of any intent to permit that type of state law to apply. <sup>14</sup> As state laws are addressed in future case law and agency opinions, OTS will consider appropriate revisions to this regulation.

OTS has decided to revise the regulation to include one suggested addition. On numerous occasions, the OTS, FHLBB and the courts, have concluded that states may not impose licensing or registration requirements on

federal savings associations. <sup>15</sup> Accordingly, state licensing and registration laws have been added to the list in § 557.12.

One additional type of state law merits discussion—state escheat laws. Some commenters argued that escheat laws should be added to the list of preempted state laws. Other commenters suggested that these laws should be added to the list of laws that are *not* preempted. This agency has concluded in prior opinions that federal law does not preempt state laws requiring a federal savings association to remit the balance of an abandoned account to a state at a designated time. Additionally, the agency has opined that states may review the records of, or obtain reports from, a federal savings association only in very limited circumstances, including determining whether the federal savings association has complied with the escheat law. <sup>16</sup> On the other hand, certain other laws (e.g., state laws prohibiting a savings association from charging any fees for lack of activity during the designated escheat period) are subject to preemption. <sup>17</sup> Because some aspects of state escheat laws are preempted and other aspects are not, OTS declines to address these laws in the final regulation.

**Section 557.13** *What state laws affecting deposits are not preempted?* Section 557.13 describes which state laws are not preempted. Specifically, this section states that OTS has not preempted certain types of laws to the extent that the laws only incidentally affect the deposit-related activities of federal savings associations or are otherwise consistent with the purposes of § 557.11. State laws that are not preempted include: Contract and commercial law, tort law, and criminal law. In addition, OTS will not preempt any other state law if OTS, upon review, finds that the law furthers a vital state interest and either has only an incidental effect on deposit-related activities or is not otherwise contrary to the purposes of § 557.11.

One commenter suggested that OTS should clarify that the phrase "incidental effect on deposit-related activities" requires that the state law must be directed at businesses in general, rather than at deposit-related activities in particular. Certainly, many state laws directed at businesses in general will not be preempted.

<sup>10</sup> 12 U.S.C. 1464(b)(1)(A).

<sup>11</sup> 12 CFR 552.3 and 549.1 (1997).

<sup>12</sup> For a discussion of general preemption principles applicable to the operations of federal thrifts, see 61 FR 50951 at 50965–50967 (September 30, 1996).

<sup>13</sup> Other commenters made suggestions that would merely add greater specificity to the proposed list of preempted laws. Commenters suggested adding state laws that address particular special purpose savings services, specific kinds of service charges or fees, or particular aspects of state funds availability laws. The OTS believes that its rule is sufficiently clear, and has not made these changes.

<sup>14</sup> To the contrary, the preemption rules are based on the premise that any state law that affects the deposit activities of federal thrifts is preempted unless it clearly falls within the parameters of § 557.13.

<sup>15</sup> See e.g., OTS Op. Chief Counsel. (December 14, 1994) and opinions and case law cited therein.

<sup>16</sup> OTS Op. Chief Counsel (January 18, 1996) at 3; FHLBB Op. Dep. Chief Counsel (May 24, 1984).

<sup>17</sup> OTS Op. Chief Counsel (July 8, 1992).

However, the focus of this aspect of the preemption inquiry is the effect of a state law on federal associations, not on how many other businesses or industries the law may also affect.

Another commenter suggested that OTS should employ a presumption in favor of preempting state laws. When confronted by interpretative questions under the final rule, OTS will follow the same analytical format that it described in the preemption discussion to the recently issued lending regulation.<sup>18</sup> To determine whether a state law is preempted, the first step is to ascertain whether the law in question is of the type listed in § 557.12 as an example of preempted law. If it is, the analysis ends there; the law is preempted. If the law is not covered by § 557.12, the next question is whether the law affects deposit-taking. If so, then, in accordance with § 557.11, the presumption arises that the law is preempted. This presumption can be reversed only if the law can clearly be shown to fit within the confines of § 557.13. For these purposes, § 557.13 is intended to be interpreted narrowly. Any doubt should be resolved in favor of preemption.

**Section 557.14 What interest rate may I pay on savings accounts?** New § 557.14 addresses interest payments on savings accounts. The proposed rule, entitled "interest and earnings," stated that a savings association may pay interest on a savings account, whether in the form of a deposit or share, at any rate or anticipated rate of return determined when the account is accepted and as provided in the association's charter and bylaws and the terms of the account. See proposed § 557.3.

One commenter suggested that the proposed rule should be revised to delete the outdated term "share" and that the title of any new section should not include the term "earnings." The term "share" is drawn from the HOLA.<sup>19</sup> OTS will continue to use this term in the final regulation to keep the regulation consistent with the statute. OTS dropped the reference to "earnings" since this term is not used in the regulation text.

One commenter noted that modern charters and bylaws do not address interest payments on savings accounts and suggested the final rule on interest should delete the references to these documents. Again, the reference to the association's charter is based on the statute, which authorizes a federal savings association to accept deposits

subject to the terms of its charter.<sup>20</sup> In order to maintain consistency with this statutory authority, this reference is retained. OTS agrees that the reference to bylaws is unnecessary, and has deleted it from the final rule.

Another commenter suggested that the regulation should state that all interest payments must be consistent with the TISA and Regulation DD, which implements TISA. This change is unnecessary because OTS has included a citation to Regulation DD in § 557.10, which addresses the authorities governing federal savings associations' issuance of deposit accounts.

One commenter suggested that the proposed rule should be revised to delete the outdated term "anticipated rate of return." Share type mutual associations use this term in making earnings distributions to account holders. Additionally, as discussed under § 557.15, rates may vary and may not be known with certainty when an account is opened. OTS believes the term anticipated rate of return is appropriate, and has retained this term in the final regulation.

The proposed regulation would have allowed federal savings associations to pay fixed rates on savings accounts, or pay rates that vary according to a schedule, index, or formula specified when the account is accepted. See proposed § 557.3.

One commenter was concerned that the proposed text would unnecessarily disallow "bump-rate" certificates of deposit. Bump-rate accounts provide the depositor with the option of changing the rate during the certificate's term. OTS did not intend to disallow "bump-rates." Therefore, the final regulation does not require a federal association to fix interest rates on savings accounts when it accepts the accounts. Rather, the final rule requires that the schedule, index, or formula be specified in the account's terms.

**Section 557.15 Who owns a deposit account?** Section 557.15 provides that a federal association may treat the account holder of record as the owner, regardless of contrary notice, until the account is transferred on the association's records. See proposed § 557.4(b). OTS received one comment in support of the proposed rule. Accordingly, OTS adopts this provision without substantive change.

**Subpart C—Deposit Activities of All Savings Associations**

**Section 557.20 What records should I maintain on deposit activities?** Section 557.20 states that federal and state

chartered savings associations should establish and maintain deposit documentation practices and records that demonstrate appropriate administration and monitoring of its deposit-related activities. These records should adequately evidence ownership, balances, and all transactions for each account. See proposed § 557.4(a). This section replaces the more specific deposit recordkeeping requirements contained in the existing regulations.

One commenter suggested that the recordkeeping requirements should apply only to federal savings associations. OTS specifically intends the recordkeeping requirements to apply to both federal and state chartered savings associations. To make this distinction clear, OTS has included this provision in subpart C which governs the deposit activities of all associations.

Another commenter suggested that the regulation should specifically state that electronic records are acceptable. OTS has recently issued a proposed regulation addressing the electronic operations of federal savings associations.<sup>21</sup> This regulation would permit federal savings associations to use electronic means and facilities to perform any authorized function, including recordkeeping. To clarify that electronic recordkeeping is available, the final rule states that savings associations may maintain records in any format consistent with standard business practices.

### C. Related Regulations

Several commenters addressed regulations that were not covered by the NPR. For example, one commenter suggested that OTS delete § 561.28 (a)(2), (a)(3) and (b), which defines money market deposit accounts. This commenter argued that § 561.28(a)(2)(i) which authorizes no more than six transfers per calendar month or statement cycle, prohibits thrifts from offering money market deposit accounts with debit cards. The commenter believed that this restriction and the other restrictions at § 561.28 are unnecessary and may be deleted.

The cited restrictions were originally imposed to preserve uniform treatment of money market accounts between Federal Reserve System members and insured institutions,<sup>22</sup> and are based on the definitions contained in the FRB's Regulation D.<sup>23</sup> Even if the restrictions contained in 12 CFR 561.28 were removed, savings associations would still be subject to such restrictions by

<sup>18</sup> See 61 FR 50951, 50966–50967 (September 30, 1996).

<sup>19</sup> 12 U.S.C. 1461(b)(1)(A).

<sup>20</sup> 12 U.S.C. 1464(b)(1)(A).

<sup>21</sup> 62 FR 51817 (October 3, 1997).

<sup>22</sup> 51 FR 10810 at 10812 (March 31, 1986).

<sup>23</sup> See 12 CFR 204.2(d)(2) (1997).

Regulation D. Moreover, OTS notes that the FRB recently considered and rejected a proposal to increase the number of transfers permitted on corporate money market accounts.

While one of the purposes of this rulemaking was to remove OTS regulations that duplicate areas covered by the FRB's Regulation D, the regulatory definitions applicable to deposits at 12 CFR parts 541 and 561 were not proposed for revision in the proposed rule. Accordingly, OTS has left these provisions unchanged. The future regulatory restructuring rulemaking may review these definitions to determine if they should be modified or removed.

Several existing OTS regulations contain cross-references to provisions that are being removed.<sup>24</sup> Consequently, technical revisions to remove these cross-references are included in this rule.

One commenter suggested that OTS give thrifts parity with national banks in connection with selling annuities and insurance. Another commenter suggested that the equal housing lender logo should be required only for advertisements for residential mortgage loans, rather than in all advertisements. OTS will review these regulations for possible revision when they are scheduled for reconsideration.

#### IV. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a

"significant regulatory action" for the purposes of Executive Order 12866.

#### V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This final rule simplifies existing procedures and reduces regulatory burden. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

#### VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that the final rule does not have a significant impact on a substantial number of small entities. As discussed in the preamble, this final rule does not impose any additional burdens or requirements on small entities. Rather, the final rule reduces several paperwork

and other burdens on all savings associations.

#### VII. Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control No. 1550-0092. Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the OTS, 1700 G Street, N.W., Washington, D.C. 20552.

The recordkeeping requirements contained in this final rule are found at 12 CFR 557.20. The reporting requirements are found in the Federal Reserve Board's Regulation DD, 12 CFR part 230. In part 557, OTS relies on the disclosure requirements applicable to savings associations under Regulation DD. OTS needs the information to supervise savings associations and to develop regulatory policy. The likely respondents/recordkeepers are OTS-regulated savings associations.

Records are to be maintained for the period of time the account is open, plus three years.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

#### VIII. Disposition of Existing Rules

Original provision	New provision	Comment
545.10		Removed.
545.11 (a) & (c)		Removed.
545.11(b)	557.10	Redesignated/modified.
545.12		Removed.
545.13 (a) & (b)(2)	557.20	Redesignated/modified.
545.13(b)(1)	557.15	Redesignated/modified.
545.14(a)	557.14	Redesignated/modified.
545.14(b)	557.14	Redesignated/modified.
545.14(c)		Removed.
556.12		Removed.
563.2		Removed.
563.3		Removed.
563.6		Removed.
563.7 (a), (c) & (d)		Removed.
563.7(b)	557.14	Redesignated/modified.
563.9		Removed.
563.10		Removed.

#### List of Subjects

##### 12 CFR Part 506

Reporting and recordkeeping requirements.

##### 12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

##### 12 CFR 556 and 561

Savings associations.

<sup>24</sup> 12 CFR 561.16, 561.42, 563g.1.

## 12 CFR Part 557

Consumer protection, Reporting and recordkeeping requirements, Savings associations.

## 12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

## 12 CFR 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, as follows:

# PART 506—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 506 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Section 506.1 is amended by adding one entry to the table in paragraph (b) in numerical order to read as follows:

**§ 506.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) Display.

12 CFR part or section where identified and described	Current OMB control No.
557.20 .....	1550-0092
* * *	* * *

# PART 545—OPERATIONS

3. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

**§§ 545.10—545.14 [Removed]**

4. Sections 545.10, 545.11, 545.12, 545.13, and 545.14 are removed.

# PART 556—STATEMENTS OF POLICY

5. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j-3; 15 U.S.C. 1693-1693r.

**§ 556.12 [Removed]**

6. Section 556.12 is removed.

7. Part 557 is added to read as follows:

# PART 557—DEPOSITS

## Subpart A—General

Sec.

557.1 What does this part do?

## Subpart B—Deposit Activities of Federal Savings Associations

557.10 What authorities govern the issuance of deposit accounts by a federal savings association?

557.11 To what extent does federal law preempt state deposit-related law?

557.12 What are some examples of preempted state laws affecting deposits?

557.13 What state laws affecting deposits are not preempted?

557.14 What interest rate may I pay on savings accounts?

557.15 Who owns a deposit account?

## Subpart C—Deposit Activities of All Savings Associations

557.20 What records should I maintain on deposit activities?

Authority: 12 U.S.C. 1462a, 1463, 1464.

## Subpart A—General

**§ 557.1 What does this part do?**

This part applies to the deposit activities of savings associations. If you are a federal savings association, subpart B of this part applies to your deposit activities. Subpart C of this part applies to the deposit activities of all federal and state chartered-savings associations.

## Subpart B—Deposit Activities of Federal Savings Associations

**§ 557.10 What authorities govern the issuance of deposit accounts by a federal savings association?**

A federal savings association ("you") may raise funds through accounts and may issue evidence of accounts under section 5(b)(1) of the HOLA (12 U.S.C. 1464(b)(1)), your charter, and this part. Additionally, 12 CFR parts 204 and 230 apply to your deposit activities.

**§ 557.11 To what extent does federal law preempt state deposit-related law?**

(a) Under sections 4(a) and 5(b) of the HOLA, 12 U.S.C. 1463(a), 1464(b), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when appropriate to:

- (1) Facilitate the safe and sound operations of federal savings associations;
- (2) Enable federal savings associations to operate according to the best thrift institutions practices in the United States; or
- (3) Further other purposes of HOLA.

(b) To further these purposes without undue regulatory duplication and burden, OTS hereby occupies the entire field of federal savings associations'

deposit-related regulations. OTS intends to give federal savings associations maximum flexibility to exercise deposit-related powers according to a uniform federal scheme of regulation. Federal savings associations may exercise deposit-related powers as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise effect deposit activities, except to the extent provided in § 557.13. State law includes any statute, regulation, ruling, order, or judicial decision.

**§ 557.12 What are some examples of preempted state laws affecting deposits?**

The OTS preempts state laws that purport to impose requirements governing the following:

- (a) Abandoned and dormant accounts;
- (b) Checking accounts;
- (c) Disclosure requirements;
- (d) Funds availability;
- (e) Savings account orders of withdrawal;
- (f) Service charges and fees;
- (g) State licensing or registration requirements; and
- (h) Special purpose savings services.

**§ 557.13 What state laws affecting deposits are not preempted?**

(a) The OTS has not preempted the following types of state law, to the extent that the law only incidentally affects your deposit-related activities or is otherwise consistent with the purposes of § 557.11:

- (1) Contract and commercial law;
  - (2) Tort law; and
  - (3) Criminal law.
- (b) The OTS will not preempt any other state law if the OTS, upon review, finds that the law:
- (1) Furthers a vital state interest; and
  - (2) Either only incidentally affects your deposit-related activities or is not otherwise contrary to the purposes expressed in § 557.11.

**§ 557.14 What interest rate may I pay on savings accounts?**

(a) You may pay interest at any rate or anticipated rate of return on savings accounts, either in deposit or in share form, as provided in your charter and the account's terms.

(b) You may pay fixed or variable rates. If you pay a variable rate, you must base it on a schedule, index, or formula that you specify in the account's terms.

**§ 557.15 Who owns a deposit account?**

You may treat the holder of record as the account owner, even if you receive contrary notice, until you transfer the account on your records.

**Subpart C—Deposit Activities of All Savings Associations****§ 557.20 What records should I maintain on deposit activities?**

All federal and state chartered savings associations ("you") should establish and maintain deposit documentation practices and records that demonstrate that you appropriately administer and monitor deposit-related activities. Your records should adequately evidence ownership, balances, and all transactions involving each account. You may maintain records on deposit activities in any format that is consistent with standard business practices.

**PART 561—DEFINITIONS**

8. The authority citation for part 561 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

**§ 561.16 [Amended]**

9. Section 561.16 is amended, in paragraph (a), by removing the phrase "as provided in § 563.6(b) of this chapter".

**§ 561.42 [Amended]**

10. Section 561.42 is amended by removing the phrase "§§ 563.6 and 561.16" and adding in its place "§ 561.16".

**PART 563—OPERATIONS**

11. The authority citation for part 563 continues to read as follows:

**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

**§§ 563.2, 563.3, 563.6, 563.7, 563.9, 563.10 [Removed]**

12. Sections 563.2, 563.3, 563.6, 563.7, 563.9, and 563.10 are removed.

**PART 563g—SECURITIES OFFERINGS**

13. The authority citation for part 563g continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

**§ 563g.1 [Amended]**

14. Section 563g.1 is amended by removing the last sentence of paragraph (a)(13).

Dated: October 15, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,  
Director.

[FR Doc. 97-27842 Filed 10-21-97; 8:45 am]

BILLING CODE 6720-01-P